IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 34512

STATE OF IDAHO,	)	**2008 Unpublished Opinion No. 646**
	)	
Plaintiff-Respondent,	)	**Filed: September 19, 2008**
	)	
v.	)	**Stephen W. Kenyon, Clerk**
	)	
STEVEN E. DEBOER,	)	**THIS IS AN UNPUBLISHED**
	)	**OPINION AND SHALL NOT**
Defendant-Appellant.	)	**BE CITED AS AUTHORITY**
	)	

Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. John T. Mitchell, District Judge. Hon. Eugene A. Marano, Magistrate.

Order of the district court, on appeal from the magistrate division, affirming judgment of conviction for driving under the influence, affirmed.

John M. Adams, Kootenai County Public Defender; Daniel G. Cooper, Deputy Public Defender, Coeur d'Alene, for appellant. Daniel G. Cooper argued.

Hon. Lawrence G. Wasden, Attorney General; Daniel W. Bower, Deputy Attorney General, Boise, for respondent. Daniel W. Bower argued.

PERRY, Judge

Steven E. DeBoer appeals from the district court's order, on intermediate appeal, affirming his judgment of conviction for driving under the influence. Specifically, DeBoer challenges the magistrate's order denying his motion to suppress. For the reasons set forth below, we affirm.

I.
FACTS AND PROCEDURE

On April 22, 2006, at 12:38 a.m., Steven E. DeBoer was driving westbound on Interstate 90, crossed the fog line on the right-hand side of the roadway, and abruptly jerked the car back into his lane of traffic. A police officer, who witnessed the erratic driving, stopped DeBoer for inattentive driving and failing to remain on the roadway. While speaking with DeBoer after the stop, the officer noticed signs of intoxication and administered field sobriety and breathalyzer

tests. After determining that DeBoer was intoxicated, he was arrested for driving under the influence (DUI). I.C. § 18-8004.

DeBoer filed a motion to suppress the evidence of his intoxication as a byproduct of an unlawful stop. At the hearing on the motion, the officer testified that, while the actions appeared inadvertent, there were no apparent roadway obstructions or other explanations for the driving behavior. The magistrate denied DeBoer's motion, finding that the facts showed a reasonable and articulable suspicion for the stop. DeBoer pled guilty to DUI, reserving the right to appeal his motion to suppress. On intermediate appeal, the district court affirmed the magistrate's denial of DeBoer's motion holding that I.C. §§ 49-630(1) and 49-119(19) unambiguously make it unlawful to drive on the shoulder of a roadway, except in certain exigent circumstances. DeBoer again appeals.

II.
STANDARD OF REVIEW

On review of a decision of the district court, rendered in its appellate capacity, we review the decision of the district court directly. *State v. DeWitt*, 145 Idaho 709, 711, 184 P.3d 215, 217 (Ct. App. 2008). We examine the magistrate record to determine whether there is substantial and competent evidence to support the magistrate's findings of fact and whether the magistrate's conclusions of law follow from those findings. *Id.* If those findings are so supported and the conclusions follow there from and if the district court affirmed the magistrate's decision, we affirm the district court's decision as a matter of procedure. *Id.*

III.
ANALYSIS

A. Reasonable and Articulable Suspicion

DeBoer alleges that the officer lacked a reasonable and articulable suspicion for effectuating the stop of his vehicle, either for failing to remain in the roadway or for inattentive driving, based on his observation of DeBoer straying over the fog line followed by a sudden correction.

A traffic stop by an officer constitutes a seizure of the vehicle's occupants and implicates the Fourth Amendment's prohibition against unreasonable searches and seizures. *Delaware v. Prouse*, 440 U.S. 648, 653 (1979); *State v. Atkinson*, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct. App. 1996). Under the Fourth Amendment, an officer may stop a vehicle to investigate

possible criminal behavior if there is a reasonable and articulable suspicion that the vehicle is being driven contrary to traffic laws. *United States v. Cortez*, 449 U.S. 411, 417 (1981); *State v. Flowers*, 131 Idaho 205, 208, 953 P.2d 645, 648 (Ct. App. 1998). The reasonableness of the suspicion must be evaluated upon the totality of the circumstances at the time of the stop. *State v. Ferreira*, 133 Idaho 474, 483, 988 P.2d 700, 709 (Ct. App. 1999). The reasonable suspicion standard requires less than probable cause but more than mere speculation or instinct on the part of the officer. *Id.* An officer may draw reasonable inferences from the facts in his or her possession, and those inferences may be drawn from the officer's experience and law enforcement training. *State v. Montague*, 114 Idaho 319, 321, 756 P.2d 1083, 1085 (Ct. App. 1988). Suspicion will not be found to be justified if the conduct observed by the officer fell within the broad range of what can be described as normal driving behavior. *Atkinson*, 128 Idaho at 561, 916 P.2d at 1286.

Inattentive driving is defined as "those circumstances where the conduct of the operator has been inattentive, careless or imprudent, in light of the circumstances then existing, rather than heedless or wanton." I.C. § 49-1401(3). A reasonable and articulable suspicion for inattentive driving exists when a police officer observes a vehicle driving outside of its traffic lane. *State v. Anderson*, 134 Idaho 552, 555, 6 P.3d 408, 411 (Ct. App. 2000). Even a fleeting diversion across the fog line is sufficient to give an observing officer a reasonable and articulable suspicion to pull over the defendant's vehicle for failing to remain in the roadway. *State v. Slater*, 136 Idaho 293, 298, 32 P.3d 685, 690 (Ct. App. 2001).

In this case, DeBoer's vehicle crossed the fog line, albeit for a short period, and corrected course in a sudden, jerking motion. Based on this observation, the officer believed he had a reasonable and articulable suspicion to effectuate a stop. *Anderson* and *Slater* hold that such a departure is sufficient to sustain this suspicion. The magistrate correctly found that the officer had a reasonable and articulable suspicion for the stop and did not err in denying DeBoer's motion to suppress.

B. Statutory Interpretation

DeBoer next alleges that I.C. §§ 49-119(19) and 49-630 do not prohibit driving on the shoulder of the right-hand side of the roadway and that our holdings to the contrary in *Anderson* and *Slater* should be abandoned. The state argues that DeBoer has failed to establish that these

decisions are manifestly wrong or sufficiently unjust or unwise to justify a departure from the principle of stare decisis.

This Court exercises free review over the application and construction of statutes. *State v. Reyes*, 139 Idaho 502, 505, 80 P.3d 1103, 1106 (Ct. App. 2003). Where the language of a statute is plain and unambiguous, this Court must give effect to the statute as written, without engaging in statutory construction. *State v. Rhode*, 133 Idaho 459, 462, 988 P.2d 685, 688 (1999); *State v. Burnight*, 132 Idaho 654, 659, 978 P.2d 214, 219 (1999); *State v. Escobar*, 134 Idaho 387, 389, 3 P.3d 65, 67 (Ct. App. 2000). The language of the statute is to be given its plain, obvious, and rational meaning. *Burnight*, 132 Idaho at 659, 978 P.2d at 219. If the language is clear and unambiguous, there is no occasion for the court to resort to legislative history or rules of statutory interpretation. *Escobar*, 134 Idaho at 389, 3 P.3d at 67. When this Court must engage in statutory construction, it has the duty to ascertain the legislative intent and give effect to that intent. *Rhode*, 133 Idaho at 462, 988 P.2d at 688. To ascertain the intent of the legislature, not only must the literal words of the statute be examined, but also the context of those words, the public policy behind the statute, and its legislative history. *Id.* It is incumbent upon a court to give a statute an interpretation, which will not render it a nullity. *State v. Beard*, 135 Idaho 641, 646, 22 P.3d 116, 121 (Ct. App. 2001). Constructions of a statute that would lead to an absurd result are disfavored. *State v. Doe*, 140 Idaho 271, 275, 92 P.3d 521, 525 (2004); *State v. Yager*, 139 Idaho 680, 690, 85 P.3d 656, 666 (2004).

As noted, we will not engage in statutory construction if the words of the statute are plain and unambiguous when given their plain, obvious, and rational meaning. Idaho Code Section 49-630(1) provides that "upon all highways of sufficient width a vehicle shall be driven upon the right half of the roadway." "Roadway" is defined as "that portion of a highway improved, designed or ordinarily used for vehicular travel, exclusive of sidewalks, shoulders, berms and rights-of-way." I.C. § 49-119(19). The listed exceptions alluded to by DeBoer, do not alter the otherwise plain and unambiguous meaning of the statutory language. Consequently, his arguments invoking principles of statutory construction fail. We therefore decline to revisit *Anderson* and *Slater*.

IV.
CONCLUSION

DeBoer's vehicle unlawfully crossed the fog line in violation of the plain and unambiguous language of I.C. § 49-630. After observing this deviation from the roadway, the officer was justified to stop the vehicle based on a reasonable and articulable suspicion of inattentive driving. *Anderson* and *Slater* properly interpret the statute to hold that even a minor departure across the fog line gives rise to a reasonable suspicion for a stop. There was substantial and competent evidence to support the magistrate's findings, and the magistrate did not err in denying DeBoer's motion to suppress. Therefore, the district court's order affirming DeBoer's judgment of conviction is affirmed.

Chief Judge GUTIERREZ and Judge LANSING, **CONCUR.**